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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID DEYOUNG, DERIVATIVELY
AND ON BEHALF OF BOFI HOLDING,
INC.,

Plaintiff,

vs.

GREGORY GARRABRANTS, ANDRE J.
MICHELETTI, ESHEL BAR-ADON, JOHN
C. TOLLA, THEODORE C. ALLRICH,
JOHN GARY BURKE, NICHOLAS A.
MOSICH, PAUL J. GRINBERG, JAMES S.
ARGALAS, JAMES J. COURT, EDWARD
J. RATINOFF, AND UZAIR DADA,

Defendants,

And

BOFI HOLDING, INC.

Nominal Defendant.

CASE No.: '16CV0163 WQHJMA

VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT
FOR:

JURY TRIAL DEMANDED

INTRODUCTION

Plaintiff David DeYoung, (“Plaintiff”), by his undersigned attorneys, derivatively and on behalf of Nominal Defendant Bofi Holding, Inc. (“Bofi” or the “Company”), submits this Verified Shareholder Derivative Complaint against members of Bofi’s Board of Directors (the “Board”) Gregory Garrabrants, Andre J. Micheletti, Eshel Bar-Adon, John C. Tolla, Theodore C. Allrich, John Gary Burke, Nicholas A. Mosich, Paul J. Grinberg, James S. Argalas, James J. Court, Edward J. Ratnoff, and Uzair Dada, (collectively, “Defendants”) for breaches of their fiduciary duties as directors and/or officers of Bofi, gross mismanagement, abuse of control, and unjust enrichment for her complaint against Individual Defendants, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Bofi, legal filings, news reports, securities analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

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1. This is a shareholder derivative action which seeks to remedy wrongdoing committed by Defendants between February 6, 2013 and the present (the “Relevant Period”).

2. BofI is the holding company of BofI Federal Bank which is a nationwide bank that provides consumer and business banking products through the Internet such as financing for single and multifamily residential properties, small-to-medium size businesses in target sectors, and selected specialty finance receivables.

3. On or about October 13, 2015, a former internal auditor at BofI, Matt Erhart, filed a whistleblower complaint against BofI in federal court (the “Whistleblower Action”), alleging that during his time at BofI beginning in September 2013, he had uncovered numerous instances where BofI had: (i) violated federal and state law; (ii) failed in many respects to comply with regulations; (iii) failed make proper disclosures; and (iv) failed to comply with internal control procedures.

4. When the news of the Whistleblower Action was revealed, BofI’s stock declined \$42.87 per share, or 30.2%, to close at \$99.13 on October 14, 2015.

5. Despite being made aware of its gross mismanagement, BofI failed to take corrective action or disclose this information to its investors. Throughout the Relevant Period, Defendants intentionally and/or recklessly caused BofI to issue

1 materially false and misleading statements and failed to disclose material adverse
2 facts regarding the Company's business, operations, performance, and prospects.
3 Particularly, Defendants caused BofI to make false and/or misleading statements
4 and/or failed to disclose that: (i) the Company's internal controls were commonly
5 disregarded; (ii) some of BofI's borrowers were foreign nationals who should have
6 been off-limits under federal anti-money-laundering laws; (iii) many BofI accounts
7 lacked required tax identification numbers; (iv) BofI violated the anti-retaliation
8 laws contained in the Sarbanes-Oxley Act of 2002 ("SOX") and the Dodd-Frank
9 Wall Street Reform and Consumer Protection Act ("Dodd-Frank") by the Board
10 causing the BofI to fire an internal auditor who raised issues to senior management
11 and to federal regulators; and (v) as a result of the above, the Company's statements
12 regarding its internal controls and other financial statements were materially false
13 and misleading at all relevant times.

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19 6. During the Relevant Period, while the price of BofI stock was
20 artificially inflated, a majority of the Board engaged in insider sales, reaping
21 millions upon millions of dollars in net proceeds.

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23 7. The Company has been substantially damaged as a result of
24 Defendants' knowing breaches of fiduciary duty and other misconduct.

25 **JURISDICTION AND VENUE**

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27 8. Subject-matter jurisdiction exists under 28 U.S.C. § 1332 because
28 there is complete diversity between plaintiff and defendants and because the

1 amount in controversy exceeds the sum or value of \$75,000, exclusive of interest
2 and costs.

3
4 9. Venue is proper in the Southern District of California under 28 U.S.C.
5 §§ 1391 and 1401 because BofI maintains its principal executive offices in this
6 District and because a substantial portion of the acts and conduct complained of
7 herein — including the dissemination of materially false and misleading
8 information to the investing public — occurred in this District.

9
10 10. Each defendant has minimum contacts with this District, and they have
11 entered into contracts in this District, have commonly traveled to this District on
12 BofI's business, or have authorized acts and actions that have had a sufficient
13 impact on this District or on BofI's shareholders and investors residing in this
14 District to justify the exercise of jurisdiction over Defendants.

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17 **PARTIES**

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19 11. Plaintiff is a current shareholder of BofI. Plaintiff has been a
20 shareholder of BofI common stock during the Relevant period and has continuously
21 held BofI common stock at all relevant times. Plaintiff is a resident of Utah.

22
23 12. BofI, a nominal defendant, is a Delaware company headquartered and
24 operating at 4350 La Jolla Village Drive, Suite 140, San Diego, California 92122.
25 BofI is a publically traded company with its shares trading on the NASDAQ under
26 the symbol "BOFI." At all material times to this action, BOFI Holding, Inc., an
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1 entity d/b/a/ “BOFI Federal Bank” and Bank of the Internet,” was a publicly traded
2 company. BofI is a citizen of California and Delaware.

3
4 13. Defendant Gregory Garrabrants (“Garrabrants”), at all relevant
5 times, has served as BofI’s President, Chief Executive Officer, and Director.
6 Garrabrants is a citizen of California.

7
8 14. Defendant Andrew J. Micheletti (“Micheletti”), at all relevant times,
9 has served as Executive Vice President and Chief Financial Officer of BofI.
10 Micheletti is a citizen of California.

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12 15. Defendant Eshel Bar-Adon (“Bar-Adon”) is the Company’s Executive
13 Vice-President and Chief Legal Officer. Bar-Adon is a citizen of California.

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15 16. Defendant John C. Tolla (“Tolla”) has been the Company’s Chief
16 Governance Risk and Compliance Officer since December 2013. Tolla is a citizen
17 of California.

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19 17. Defendant Paul J. Grinberg (“Grinberg”), at all relevant times, has
20 served as a member of the Board and serves as a member of the Compensation
21 Committee. Grinberg is a citizen of California.

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23 18. Defendant Theodore C. Allrich (“Allrich”), at all relevant times, has
24 served as Chairman of the Board of Directors and served as Vice Chairman of the
25 Board of Directors from 1999 to 2009. Allrich sits on the Compensation Committee
26 of the Board. Allrich is a citizen of California.
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1 19. Defendant John Gary Burke (“Burke”), in all relevant times, has
2 served as a member of the Board and is a member of the Compensation Committee
3 and the Chairman of the Internal Assets Review Committee (“IAR Committee”).
4 Upon information and belief, Burke is a citizen of Ohio.
5

6 20. Defendant Nicholas A. Mosich (“Mosich”), at all relevant times, has
7 served as Vice Chairman of the Board of Directors and as a member of the Board of
8 Directors since May 2009. Mosich is a citizen of California.
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10 21. Defendant James S. Argalas (“Argalas”), at all relevant times, has
11 served as a member of the Board of Directors. Argalas is a member of the Audit
12 Committee and as a member of the Internal Asset Review Committee.
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14 22. Defendant James J. Court (“Court”), at all relevant times, has served
15 as a member of the Board. Court is a citizen of California.
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17 23. Defendant Edward J. Ratinoff (“Ratinoff”), at all relevant times, has
18 served as a member of the Board and as a member of the Nominating Committee.
19 Ratinoff is a citizen of California.
20

21 24. Defendant Uzair Dada (“Dada”) has served as a member of the Board
22 since January 2015. Dada is a citizen of California. According to the Company’s
23 2015 Proxy Statement, during the 2015 fiscal year, Defendant Dada received as
24 compensation from the Company: \$18,000 in cash and \$67,061 in stock awards for
25 his service as a non-employee Director.
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1 25. Defendants referenced in paragraphs 13 to 24 are sometimes referred
2 to herein, collectively as “Defendants.”

3
4 26. Because of their positions at BofI, possessed the power and authority
5 to control the contents of BofI’s reports to the U.S. Securities and Exchange
6 Commission (“SEC”), press releases, and presentations to securities analysts,
7 money and portfolio managers, and institutional investors, *i.e.*, the market.
8 Defendants caused the Company to make specific false and misleading statements
9 and/or reviewed and approved the Company’s reports and press releases alleged
10 herein to be misleading prior to, or shortly after their issuance, and had the ability
11 and opportunity to prevent their issuance or cause them to be corrected. Because of
12 their positions and access to material non-public information available to them,
13 Defendants knew that the adverse facts specified herein had not been disclosed to,
14 and were being concealed from, the public, and that the positive representations
15 which were being made were then materially false and/or misleading.
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20 **DEFENDANTS’ DUTIES**

21 27. By reason of their positions as officers, directors and/or fiduciaries of
22 BofI and because of their ability to control the business and corporate affairs of
23 BofI, owed BofI and its shareholders fiduciary obligations of trust, loyalty, good
24 faith, and due care, and were and are required to use their utmost ability to control
25 and manage BofI in a fair, just, honest, and equitable manner. Defendants were and
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1 are required to act in furtherance of the best interests of BofI and its shareholders so
2 as to benefit all shareholders equally.

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4 28. Each director and officer of the Company owes to BofI and its
5 shareholders the fiduciary duty to exercise good faith and diligence in the
6 administration of the Company and in the use and preservation of its property and
7 assets and the highest obligations of fair dealing.

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9 29. Because of their positions of control and authority as directors and/or
10 officers of BofI, Defendants were able to and did, directly and/or indirectly,
11 exercise control over the wrongful acts complained of herein.

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13 30. To discharge their duties, the officers and directors of BofI were
14 required to exercise reasonable and prudent supervision over the management,
15 policies, controls, and operations of the Company.

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17 31. Defendants, by virtue of their positions as a director and/or officer,
18 owed to the Company and to its shareholders the highest fiduciary duties of loyalty,
19 good faith, and the exercise of due care and diligence in the management and
20 administration of the affairs of the Company, as well as in the use and preservation
21 of its property and assets. Defendants were required to, among other things: (i)
22 ensure BofI operated in a diligent, honest, and prudent manner in accordance with
23 its bylaws, charter, and the laws and regulations of Delaware and the United States;
24 (ii) conduct the Company's affairs in an efficient, business-like manner so as to
25 make it possible to provide the highest quality performance of BofI's business, to
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1 avoid wasting BofI's assets and to maximize the value of BofI's stock; (iii) to fully
2 inform themselves as to how BofI conducted its operations and, upon receipt of
3 notice or information of imprudent or unsound conditions or practices, to make a
4 reasonable inquiry in connection therewith, and to take steps to correct such
5 conditions or practices; (iv) to establish and maintain systematic and accurate
6 records and reports of the business and affairs of the Company and procedures for
7 the reporting of the business and internal affairs and to periodically investigate, or
8 cause independent investigation to be made of, said reports and records; (v)
9 maintain and implement an adequate and functioning system of internal legal,
10 financial, and management controls, such that BofI's operations and financial
11 statements comply with all laws; (vi) exercise reasonable control and supervision
12 over public statements made by BofI's officers and employees and any other
13 reports on information made by BofI was required by law to disseminate; and (vii)
14 examine and evaluate any reports of examinations, audits, or other financial
15 information concerning the financial affairs of BofI and to make full and accurate
16 disclosures of all material facts concerning, *inter alia*, each of the subjects and
17 duties set forth above.
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24 32. Defendants' conduct complained of herein involves a knowing and
25 culpable violation of their obligations as directors and officers of BofI, the absence
26 of good faith on their part, or a reckless disregard for their duties to the Company
27 and its shareholders that Defendants were aware or should have been aware posed a
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1 risk of serious injury to the Company. Defendants' conduct has been ratified by
2 Defendants who collectively comprised the BofI's Board at all relevant times.

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4 33. As senior executive officers and directors of a publicly-traded
5 company whose common stock was registered with the SEC pursuant to the
6 Securities Exchange Act of 1934 (the "Exchange Act") and traded on NASDAQ,
7 Defendants had a duty not to effect the dissemination of inaccurate and untruthful
8 information with respect to the Company's financial condition and performance,
9 growth, operations, financial statements, business, products, management, earnings,
10 and present and future business prospects, so that the market price of the
11 Company's common stock would be based upon truthful and accurate information,
12 and had a duty to correct such dissemination of inaccurate and untruthful
13 information. Accordingly, Defendants breached their fiduciary duties by causing or
14 recklessly permitting violations of the federal securities laws by causing BofI to
15 make misrepresentations and omissions during the Relevant Period.

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17 34. To discharge their duties, the officers and directors of BofI were
18 required to exercise reasonable and prudent supervision over the management,
19 policies, practices, and internal controls of the Company. By virtue of such duties,
20 the officers and directors of BofI were required to, among other things: (i) refrain
21 from acting upon material inside corporate information to benefit themselves; (ii)
22 ensure that the Company complied with its legal obligations and requirements, (iii)
23 including acting only within the scope of its legal authority and disseminating
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1 truthful and accurate statements to the investing public; (iv) conduct the affairs of
2 the Company in an efficient, business-like manner so as to make it possible to
3 provide the highest quality performance of its business, to avoid wasting the
4 Company's assets, and to maximize the value of the Company's stock; (v) properly
5 and accurately guide investors and analysts as to the true financial condition of the
6 Company at any given time, including making accurate statements about the
7 Company's financial results; (vi) remain informed as to how BofI conducted its
8 operations, and, upon receipt of notice or information of imprudent or unsound
9 conditions or practices, make reasonable inquiry in connection therewith, and take
10 steps to correct such conditions or practices and make such disclosures as necessary
11 to comply with securities laws; and (vii) ensure that BofI was operated in a diligent,
12 honest, and prudent manner in compliance with all applicable laws, rules, and
13 regulations.

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19 35. Defendants further owed to BofI and the shareholders the duty of
20 loyalty requiring that each favor BofI's interest and that of its shareholders over
21 their own while conducting the affairs of the Company and refrain from using their
22 position, influence or knowledge of the affairs of the Company to gain personal
23 advantage.

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25 36. BofI was required to abide with Generally Accepted Accounting
26 Principles ("GAAP") when issuing its financial statements. GAAP is a common set
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1 of accounting standards and procedures recognized by accounting professionals and
2 used to compile financial statements.

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4 37. The accounting profession recognizes GAAP is recognized as the
5 conventions, rules, and procedures which are necessary to define accepted
6 accounting practices at a particular time. SEC Regulation S-X (17 C.F.R. § 210.4-
7 01(a)(1)) states that financial statements filed with the SEC that do not follow and
8 are in compliance with GAAP are presumed to be misleading and inaccurate,
9 despite other disclosures. Regulation S-X mandates that interim financial
10 statements must comply with GAAP, with the exception that interim financial
11 statements need not include disclosures that would be duplicative of disclosures
12 accompanying annual disclosures pursuant to 17 C.F.R. § 210.10-01(a).

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16 38. During the Relevant Period, BofI filed several annual reports with the
17 SEC on Form 10-K on September 4, 2013, August 28, 2014, and August 26, 2015.
18 Each 10-K stated that its financial statements were “prepared in accordance with
19 accounting principles generally accepted in the United States of America.”
20

21 39. In actually, Defendants failed to endure that BofI followed GAAP
22 during the Relevant Period.
23

24 **CONTOL, ACCESS, AND AUTHORITY**

25 40. Because of their advisory, executive, managerial, and directorial
26 positions with BofI, Defendants had access to adverse, nonpublic information about
27 the financial condition, operations, and improper representations of BofI.
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1 41. Because of their positions of control and authority, Defendants were
2 able to and did, directly or indirectly, exercise control over the wrongful acts
3 complained of herein, as well as the contents of the various public statements issued
4 by BofI.

5
6 42. Defendants was the agent of each of the other Defendants and of BofI,
7 and was at all times acting within the course and scope of such agency.
8

9 **BREACHES OF FIDUCIARY DUTIES**

10 43. By virtue of his or her position as a director and/or officer, Defendants
11 owed to BofI and to its shareholders the fiduciary duties of loyalty and good faith
12 and the exercise of due care and diligence in the management and administration of
13 the affairs of BofI, as well as in the use and preservation of BofI's property and
14 assets. Defendants' conduct complained of herein involves a knowing and culpable
15 violation of their obligations as directors and officers of BofI, the absence of good
16 faith on their part, or a reckless disregard for their duties to BofI and its
17 shareholders that Defendants were aware or should have been aware posed a risk of
18 serious injury to BofI.
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20 44. Defendants each breached their duties of loyalty and good faith by
21 causing the Company to make false and/or misleading statements and/or failing to
22 disclose that: (i) the Company was doing business with foreign nationals who
23 should have been off-limits under federal anti-money-laundering laws; (ii) the
24 Company had as many customer accounts without tax identification numbers,
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1 contrary to BofI's representations to its primary regulator, the OCC; (iii) as a result,
2 the Company's revenue and financial results were overstated; (iv) the Company's
3 financial statements were not prepared in accordance with GAAP; (v) BofI lacked
4 adequate internal and financial controls; and (vi) as a results of the foregoing,
5 BofI's financial statements were materially false and misleading at all relevant
6 times.
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9 45. As a result of Defendants' actions and course of conduct, BofI is now
10 the subject of class action lawsuits that allege violations of federal securities laws,
11 and a whistleblower lawsuit alleging violations of federal law. As a result, BofI has
12 expended, and will continue to expend, significant sums of money to rectify
13 Defendants' wrongdoing.
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15 **DEFENDANTS' MISCONDUCT**

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17 46. BofI is the holding company for BofI Federal Bank, a nationwide bank
18 that provides financing for single and multifamily residential properties, small-to-
19 medium size businesses in target sectors, and selected specialty finance receivables.
20 With approximately \$6.3 billion in assets, BofI Federal Bank provides consumer
21 and business banking products through its low-cost distribution channels and
22 affinity partners.
23

24
25 47. As a federally-chartered savings and loan association, BofI is in a
26 highly regulated field. Among others, BofI is regulated by the Office of the
27 Comptroller of the Currency ("OCC"), the Financial Industry Regulatory Authority
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1 (“FINRA”), the Board of Governors of the Federal Reserve System (“Federal
2 Reserve”), the Federal Deposit Insurance Corporation (“FDIC”), the SEC, and the
3 Consumer Financial Protection Bureau (“CFPB”).
4

5 48. BofI is subject to a variety of statutes including, without limitation, the
6 Bank Secrecy Act of 1970 (“BSA”), the USA PATRIOT Act, including the Know
7 Your Customer Rule (“KYC”), the Dodd-Frank Act, and SOX, the Securities Act
8 of 1933, and the Exchange Act.
9

10 49. BofI Federal Bank’s most important business is making mortgages to
11 high-net-worth individuals for the purchase of expensive properties through BofI
12 Federal Bank’s Bank of Internet brand.
13

14 50. BofI is headquartered in San Diego, California, and its shares trade on
15 the NASDAQ Global Select Market under the symbol “BOFI.”
16

17 51. On February 6, 2013, Defendants caused BofI to file a Form 10-Q with
18 the SEC for the quarter ending December 31, 2012 (the 2Q13 10-Q”). The 2Q13
19 10-Q was reviewed by the Board and signed by Defendants Garrabrants and
20 Micheletti. The 2Q13 10-Q contained SOX certifications signed by Defendants
21 Garrabrants and Micheletti stating that the financial information contained in the
22 4Q12 10-Q was accurate and disclosed any material changes to the Company’s
23 internal control over financial reporting. The 2Q13 10-Q represented the BofI’s
24 financial results for the quarter:
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BofI HOLDING, INC. AND SUBSIDIARY
SELECTED CONSOLIDATED FINANCIAL INFORMATION

	At or for the Three Months Ended December 31,		At or for the Six Months Ended December 31,	
<i>(Dollars in thousands, except per share data)</i>	2012	2011	2012	2011
<i>Selected Income Statement Data:</i>				
Interest and dividend income	\$ 33,567	\$ 28,616	\$ 64,556	\$ 56,381
Interest expense	8,631	9,530	17,135	19,118
Net interest income	24,936	19,086	47,421	37,263
Provision for loan losses	1,950	1,600	4,500	3,963
Net interest income after provision for loan losses	22,986	17,486	42,921	33,300
Non-interest income	6,249	2,986	13,010	7,556
Non-interest expense	12,781	9,204	24,313	18,756
Income before income tax expense	16,454	11,268	31,618	22,100
Income tax expense	6,686	4,608	12,861	8,907
Net income	\$ 9,768	\$ 6,660	\$ 18,757	\$ 13,193
Net income attributable to common stock	\$ 9,436	\$ 6,280	\$ 18,348	\$ 12,687
<i>Per Share Data:</i>				
Net income:				
Basic	\$ 0.71	\$ 0.56	\$ 1.44	\$ 1.15
Diluted	\$ 0.70	\$ 0.54	\$ 1.37	\$ 1.14
Book value per common share	\$ 17.08	\$ 14.80	\$ 17.08	\$ 14.80

Tangible book value per common share	\$ 17.08	\$ 14.80	\$ 17.08	\$ 14.80
Weighted average number of shares outstanding:				
Basic	13,224,612	11,174,947	12,707,837	11,036,046
Diluted	13,824,440	12,304,628	13,538,503	11,415,793
Common shares outstanding at end of period	12,824,195	11,419,584	12,824,195	11,419,584
Common shares issued at end of period	13,665,957	12,162,604	13,665,957	12,162,604
Performance Ratios and Other Data:				
Loan originations for investment	\$ 331,999	\$ 132,153	\$ 611,696	\$ 384,779
Loan originations for sale	280,569	227,810	535,365	318,179
Loan purchases	—	—	1,541	—
Return on average assets	1.45%	1.23%	1.45%	1.26%
Return on average common stockholders' equity	17.32%	15.86%	17.85%	16.55%
Interest rate spread ¹	3.69%	3.44%	3.63%	3.47%
Net interest margin ²	3.81%	3.60%	3.76%	3.62%
Efficiency ratio	40.98%	41.70%	40.23%	41.85%
Capital Ratios:				
Equity to assets at end of period	8.44%	8.71%	8.44%	8.71%
Tier 1 leverage (core) capital to adjusted tangible assets ³	8.52%	8.27%	8.52%	8.27%
Tier 1 risk-based	13.95%	13.19%	13.95%	13.19%

capital ratio ³				
Total risk-based capital ratio ³	14.60%	13.77%	14.60%	13.77%
Tangible capital to tangible assets ³	8.52%	8.27%	8.52%	8.27%
Asset Quality Ratios:				
Net annualized charge-offs to average loans outstanding	0.13%	0.39%	0.28%	0.41%
Non-performing loans to total loans	0.95%	0.76%	0.95%	0.76%
Non-performing assets to total assets	0.79%	0.64%	0.79%	0.64%
Allowance for loan losses to total loans at end of period	0.52%	0.53%	0.52%	0.53%
Allowance for loan losses to non-performing loans	54.92%	68.79%	54.92%	68.79%

52. The 2Q13 10-Q stated the following with respect to the quarter's financial results:

RESULTS OF OPERATIONS

Comparison of the Three and Six Months Ended December 31, 2012 and December 31, 2011

For the three months ended December 31, 2012, we had net income of \$9.8 million compared to net income of \$6.7 million for the three months ended December 31, 2011. Net income attributable to common stockholders was \$9.4 million or \$0.70 per diluted share compared to net income attributable to common shareholders of \$6.3 million or \$0.54 per diluted share for the three months ended December 31, 2012 and 2011, respectively. For the six months ended December 31, 2012, we had net income of \$18.8 million compared to

1 net income of \$13.2 million for the six months ended December 31,
2 2011. Net income attributable to common stockholders was \$18.3
3 million or \$1.37 per diluted share compared to net income attributable
4 to common shareholders of \$12.7 million or \$1.14 per diluted share
for the six months ended December 31, 2012 and 2011, respectively.

5 Other key comparisons between our operating results for the three and
6 six months ended December 31, 2012 and 2011 are:

- 7 • Net interest income increased \$5.9 million and \$10.2 million in
8 the quarter and six months ended December 31, 2012 due to a
9 23.4% and 22.7%, increase in average earning assets primarily
10 from the growth in our loan portfolio in those respective
11 periods. Our net interest margin increased 21 basis points and
12 14 basis points in the quarter and six months ended
13 December 31, 2012 compared to December 31, 2011. The
14 overall rate on interest earning assets was lower by 27 and 37
15 basis points in the three and six month periods ended December
16 31, 2012 compared to December 31, 2011, primarily because
17 loan rates have been pushed lower by the economy and
18 competition. This reduction on the asset side was more than
19 offset by a 52 and 53 basis point reduction in rates paid on
interest bearing liabilities for the three and six months ending
December 31, 2012 compared to December 31, 2011. The
primarily reduction was due to a decrease in the rates paid on
time deposits of 57 and 52 basis points , respectively, as we
allowed the higher rate time deposits to roll of the books.
- 20 • Non-interest income increased \$3.3 million and \$5.5 million for
21 the three and six months ended December 31, 2012 compared
22 to the three and six months ended December 31, 2011. The
23 increase in non-interest income for the quarter was primarily
24 the result of a \$2.5 million increase in mortgage banking
25 income, a \$448,000 increase in prepayment penalty income and
26 a \$507,000 increase in banking service fees. The increase in
27 non-interest income for the six months ended December 31,
28 2012 compared to December 31, 2011 was primarily the result
of a \$4.2 million increase in mortgage banking income, a
\$589,000 increase in prepayment penalty income and a
\$756,000 increase in banking service fees.

- Non-interest expense increased \$3.6 million and \$5.6 million for the three and six months ended December 31, 2012 compared to the three and six months ended December 31, 2011. For the three months ended December 31, 2012 compared to the three months ended December 31, 2011 salaries and compensation was up \$2.0 million primarily due to the overall increase in staff, mainly in our production areas to support the overall growth of the Bank. Advertising and promotions were up \$510,000 mainly due to the cost of lead generation in the mortgage area. Other general and administration expenses were \$689,000 higher primarily due to an increase of \$258,000 in loan related expenses, an increase of \$144,000 related to software, licenses and associated costs, an increase of \$72,000 in expenses related travel, and an increase of \$53,000 in losses on deposit accounts. For the six months ended December 31, 2012 compared to the six months ended December 31, 2011 salaries and compensation was up \$3.6 million primarily due to the overall increase in staff, mainly in our production areas to support the overall growth of the Bank. Advertising and promotions were up \$846,000 mainly due to the cost of lead generation in the mortgage area. Other general and administration expenses were \$1.4 million higher primarily due to an increase of \$708,000 in loan related expenses, an increase of \$198,000 related to software, licenses and associated costs, an increase of \$77,000 in expenses related travel, and an increase of \$57,000 in losses on deposit accounts.

53. The 2/6/1310-Q also contained the following:

FINANCIAL CONDITION

Balance Sheet Analysis

Our total assets increased \$487.5 million, or 20.4%, to \$2,874.3 million, as of December 31, 2012, up from \$2,386.8 million at June 30, 2012. The increase in total assets was primarily due to an increase of \$434.7 million in net loans held for investment. Total liabilities increased a total of \$451.5 million, primarily due to an increase in deposits of \$353.2 million and an increase in borrowings of \$105.0 million from the Federal Home Loan Bank of San Francisco (the "FHLB"). Our deferred income taxes increased \$2.0 million to \$17.0 million primarily due to the impairment in our securities portfolio, loan loss provision, and state taxes.

Loans

Net loans held for investment increased 25.3% to \$2,155.3 million at December 31, 2012 from \$1,720.6 million at June 30, 2012. The increase in the loan portfolio was due to loan originations and purchases of \$613.2 million, offset by loan repayments of \$215.1 million, net transfers from our held for sale portfolio of \$42.2 million and a net increase in the allowance of \$1.8 million during the six months ended December 31, 2012.

The following table sets forth the composition of the loan portfolio as of the dates indicated:

<i>(Dollars in thousands)</i>	Amount	Perc ent	Amount	Percent
Residential real estate loans:				
Single family (one to four units)	1,215,744	55.6	863,624	49.6%
Home equity	25,742	1.2	29,167	1.7%
Multifamily (five units or more)	766,247	35.0	687,661	39.5%
Commercial real estate	28,681	1.3	35,174	2.0%
Consumer—Recreational vehicle	21,494	1.0	24,324	1.4%
Commercial secured and other	128,267	5.9	100,549	5.8%
Total loans held for investment	2,186,175	100.0	1,740,499	100.0%
Allowance for loan losses	(11,449)		(9,636)	
Unamortized premiums/discounts, net of deferred loan fees	(19,420)		(10,300)	
Net loans held for investment	2,155,306		1,720,563	

55. The 3Q13 10-Q stated in relevant part:

* * *

* * *

1 The Company's management, with the participation of its Chief
2 Executive Officer and Chief Financial Officer, conducted an
3 evaluation of the effectiveness of the design and operation of the
4 Company's disclosure controls and procedures, pursuant to Exchange
5 Act Rule 13a-15(e). Based upon that evaluation, our Chief Executive
6 Officer along with our Chief Financial Officer concluded that, as of
7 the end of the period covered by this report, the Company's disclosure
8 controls and procedures were effective to ensure that information
9 required to be disclosed by the Company in reports that it files or
10 submits under the Exchange Act is recorded, processed, summarized
11 and reported within the time periods specified by the Securities and
12 Exchange Commission's rules and forms, and that such information is
13 accumulated and communicated to our management, including our
14 Chief Executive Officer and Chief Financial Officer, as appropriate,
15 to allow timely decisions regarding required disclosure.

16 There were no changes in the Company's internal control over
17 financial reporting that occurred during the quarter ended March 31,
18 2013 that have materially affected, or are reasonably likely to
19 materially affect our internal control over financial reporting

20 56. On September 4, 2013, BofI filed an annual Form 10-K with the SEC
21 providing the Company's financial and operating results for the fiscal year ended
22 June 30, 2013 (the "2013 10-K"). The 2013 10-K was signed by Defendants
23 Garrabrants, Micheletti, Allrich, Mosich, Argalas, Burke, Court, Grinberg, and
24 Ratinoff. The 2013 10-K contained signed certifications pursuant to SOX by
25 Defendants Garrabrants and Micheletti, stating that the financial information
26 contained in the 2013 10-K was accurate and disclosed any material changes to the
27 Company's internal control over financial reporting.

28 57. The 2013 10-K, the Company stated, in part:

REGULATION OF BOFI FEDERAL BANK

1 General. As a federally-chartered savings and loan association whose
2 deposit accounts are insured by the Federal Deposit Insurance
3 Corporation (“FDIC”), BofI Federal Bank is subject to extensive
4 regulation by the FDIC and . . . the [Office of the Comptroller of the
5 Currency]. Under the Dodd-Frank Act, the examination, regulation
6 and supervision of savings associations, such as BofI Federal Bank,
7 were transferred from the OTS to the OCC, the federal regulator of
8 national banks under the National Bank Act. The following
9 discussion summarizes some of the principal areas of regulation
10 applicable to the Bank and its operations.

11 * * *

12 Anti-Money Laundering and Customer Identification. The U.S.
13 government enacted the Uniting and Strengthening America by
14 Providing Appropriate Tools Required to Intercept and Obstruct
15 Terrorism Act of 2001 (“USA Patriot Act”) on October 26, 2001 in
16 response to the terrorist events of September 11, 2001. The USA
17 Patriot Act gives the federal government broad powers to address
18 terrorist threats through enhanced domestic security measures,
19 expanded surveillance powers, increased information sharing, and
20 broadened anti-money laundering requirements. In February 2010,
21 Congress re-enacted certain expiring provisions of the USA Patriot
22 Act.

23 58. The 2013 10-K contained BofI’s financials for the quarter, including
24 BofI reporting net income of \$11.13 million, or \$0.78 per diluted share, on net
25 revenue of \$35.87 million, compared to net income of \$8.57 million, or \$0.64 per
26 diluted share, on net revenue of \$26.55 million for the same period in the prior year.
27 For fiscal year 2013, the Company reported net income of \$40.29 million, or \$2.89
28 per diluted share, on net revenue of \$129.34 million, compared to net income of
\$29.48 million, or \$2.33 per diluted share, on net revenue of \$95.56 million for
fiscal year 2012.

1 59. Matt Erhart (“Erhart”), a former FINRA regulator, on or about
2 September 23, 2013, began working for BofI as an internal auditor, performing
3 audits of a variety of aspects of BofI’s operations.
4

5 60. On November 5, 2013, Defendants caused BofI to file a Form 10-Q
6 with the SEC for the quarter ending September 30, 2013 (the “1Q14 10-Q”). The
7 1Q14 10-Q was approved by the Board and signed by Defendants Garrabrants and
8 Micheletti. The 1Q14 10-Q contained signed certifications pursuant to SOX by
9 Defendants Garrabrants and Micheletti, stating that the financial information
10 contained in the 2013 10-K was accurate and disclosed any material changes to the
11 Company’s internal control over financial reporting.
12
13

14 61. The 1Q14 10-Q reported that BofI had a net income of \$12.18 million,
15 or \$0.85 per diluted share, on net revenue of \$35.09 million, compared to net
16 income of \$8.99 million, or \$0.67 per diluted share, on net revenue of \$29.25
17 million for the same period in the prior year.
18
19

20 62. On December 4, 2013, BofI filed Form 8-K with the SEC, signed by
21 Defendant Micheletti, containing an Investor Presentation concerning the
22 Company’s first quarter of 2014 financial and operating projections (the “1Q14
23 Investor Presentation”). The 1Q14 Investor Presentation specified that if investors
24 had questions they should contact Defendant Garrabrants and stated in relevant
25 part:
26
27
28

- BofI is “Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial”;
- Bofi is “a Top Performer among the Broader Universe of All Public Banks and Thrifts”;
- BofI is “a Top Quartile Performer Versus Bank Peer Group”;
- Bofi’s “Business Model is More Profitable Because [Bofi’s] Costs are Lower”;
- Bofi’s “Asset Growth has been Driven by Strong and Profitable Organic Loan Production”;

63. On or about December 19, 2013, Erhart finalized his internal audit of Bofi’s Structured Settlements and Lottery practice, pursuant to which Bofi, through its subsidiary Anfed Bank, has a team that calls individuals receiving structured settlements in litigation or lottery payments with the goal of purchasing those income streams in return for a lump sum. Erhart found that during the internal audit was that Bofi’s callers were not notifying the individuals they called that the calls were being recorded, in violation of California Penal Code § 632.

64. On or about December 19, 2013, Erhart and his manager Jonathan Ball (“Ball”) were asked by Defendant Bar-Adon, Bofi’s Chief Legal Officer and Executive Vice President, to meet in order to discuss the audit of the Structured Settlements and Lottery line of business. In this line of business, Bofi, through its subsidiary Anfed Bank, purchased structured settlements from plaintiffs in litigation, and lottery payments from winners of the lottery. Defendant Bar-Adon told employees to remove evidence of the violation of California Penal Code §632 from the audit of the Structured Settlements and Lottery. Ball informed Defendants Bar-Adon that an internal auditor was not permitted to do that, Defendant Bar-Adon

1 instructed Erhart to mark the entire report “Attorney Client Privileged,” stating that
2 the findings could be discoverable in class action litigation against BofI and this
3 would prevent that problem. In addition, Defendant Bar-Adon instructed Erhart not
4 to speak to any employee in the Structured Settlements and Lottery Department.
5

6 65. On the same day, Defendant Tolla instructed Erhart never to state in an
7 audit report that BofI violated a federal or state law.
8

9 66. In or about January 2014, Thomas Constantine (“Constantine”), BofI’s
10 Chief Credit Officer, met with Erhart, Ball, and a few others. At the meeting
11 Constantine stated he was not responsible for any of BofI’s numbers after they are
12 turned over to Defendant Micheletti, the CFO. Constantine emphasized that he
13 could and would not vouch for the accuracy of the numbers once the CFO had
14 them, basically calling into question the accuracy of such numbers and Defendant
15 Micheletti changing the numbers after they are received.
16
17

18 67. On February 5, 2014, Defendants caused BofI to file a Form 10-Q with
19 the SEC for the period ending December 31, 2013 (the 2Q14 10-Q”). The 2Q14 10-
20 Q was approved by the Board and signed by Defendants Garrabrants and
21 Micheletti. The 2Q14 10-Q also contained SOX certifications signed by Defendants
22 Garrabrants and Micheletti stating that the financial information contained in the
23 2Q14 10-Q was accurate and disclosed any material changes to the Company’s
24 internal control over financial reporting. The 2Q14 10-Q reported BofI’s net
25 income of \$13.15 million, or \$0.91 per diluted share, on net revenue of \$38.37
26
27
28

1 million, compared to net income of \$9.77 million, or \$0.70 per diluted share, on net
2 revenue of \$31.19 million for the same period in the prior year.

3
4 68. On February 6, 2014, Defendants caused BofI to file a Form 8-K with
5 the SEC containing BofI's 2Q14 Investor Presentation with financial and operating
6 projections (the "2Q14 Investor Presentation"). The 2Q14 Investor Presentation
7 contained, in part, the following statements:
8

- 9
- 10 • BofI is "Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial";
 - 11 • BofI is "a Top Performer among the Broader Universe of All Public Banks and Thrifts";
 - 12 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
 - 13 • BofI's "Business Model is More Profitable Because Our Costs are Lower"; and
 - 14 • BofI's "Asset Growth has been Driven by Strong and Profitable Organic Loan Production";
- 15

16 69. On May 6, 2014, Defendants caused BofI to file a Form 10-Q with the
17 SEC for the period ending March 31, 2014 (the 3Q14 10-Q"). The 3Q14 10-Q was
18 approved by the Board and signed by Defendants Garrabrants and Micheletti. The
19 2Q14 10-Q also contained SOX certifications signed by Defendants Garrabrants
20 and Micheletti stating that the financial information contained in the 3Q14 10-Q
21 was accurate and disclosed any material changes to the Company's internal control
22 over financial reporting. The 3Q14 10-Q reported net income of \$14.61 million, or
23 \$1.00 per diluted share, on net revenue of \$40.88 million, compared to net income
24
25
26
27
28

1 of \$10.40 million, or \$0.74 per diluted share, on net revenue of \$33.04 million for
2 the same period in the prior year.

3
4 70. On May 7, 2014, Defendants caused BofI to file a Form 8-K with the
5 SEC containing an Investor Presentation concerning the Company's 3Q14 financial
6 and operating projections (the "3Q14 Investor Presentation"). The 3Q14 Investor
7 Presentation contained, in part, the following statements:
8

- 9
- 10 • BofI is "Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial";
 - 11 • BofI is "a Top Performer among the Broader Universe of All Public Banks and Thrifts";
 - 12 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
 - 13 • BofI's "Business Model is More Profitable Because Our Costs are Lower"; and
 - 14 • BofI's Asset Growth has been Driven by Strong and Profitable Organic Loan Production";
- 15

16 71. On August 7, 2014, Defendants caused BofI to issue a press release
17 and filed a Form 8-K with the SEC to announce BofI's financial and operating
18 results for the fourth quarter and fiscal year ended June 30, 2014 (the "2014 Form
19 8-K"). The 2014 Form 8-K, and press release, were prepared by Defendants
20 Garrabrants and Micheletti and signed by Defendant Micheletti. For the fourth
21 quarter, BofI reported net income of \$16.01 million, or \$1.09 per diluted share, on
22 net revenue of \$45.22 million, compared to net income of \$11.13 million, or \$0.78
23 per diluted share, on net revenue of \$35.87 million for the same period in the prior
24 year. For fiscal year 2014, the Company reported net income of \$55.96 million, or
25 \$3.85 per diluted share, on net revenue of \$159.55 million, compared to net income
26
27
28

1 of \$40.29 million, or \$2.89 per diluted share, on net revenue of \$129.34 million for
2 fiscal year 2013.

3
4 72. On August 28, 2014, Defendants caused BofI to file its annual report
5 on Form 10-K with the SEC providing the Company's financial and operating
6 results for the fiscal year ended June 30, 2014(the "2014 10-K"). The 2014 10-K
7 was signed by Defendants Garrabrants, Micheletti, Allrich, Mosich, Argalas, Burke,
8 Court, Grinberg, and Ratinoff, and it contained signed certifications pursuant to
9 SOX by Defendants Garrabrants and Micheletti, stating that the financial
10 information contained in the 2014 10-K was accurate and disclosed any material
11 changes to the Company's internal control over financial reporting.
12
13

14 73. In the 2014 10-K, the Company stated, in part:
15

16 **REGULATION OF BOFI FEDERAL BANK**

17 General. As a federally-chartered savings and loan association whose
18 deposit accounts are insured by FDIC, BofI Federal Bank is subject to
19 extensive regulation by the FDIC and, as of the Transfer Date, the
20 OCC. Under the Dodd-Frank Act, the examination, regulation and
21 supervision of savings associations, such as BofI Federal Bank, were
22 transferred from the OTS to the OCC, the federal regulator of national
23 banks under the National Bank Act. The following discussion
24 summarizes some of the principal areas of regulation applicable to the
25 Bank and its operations.

26 * * *

27 Anti-Money Laundering and Customer Identification. The U.S.
28 government enacted the Uniting and Strengthening America by
Providing Appropriate Tools Required to Intercept and Obstruct
Terrorism Act of 2001 ("USA Patriot Act") on October 26, 2001 in
response to the terrorist events of September 11, 2001. The USA
Patriot Act gives the federal government broad powers to address

1 terrorist threats through enhanced domestic security measures,
2 expanded surveillance powers, increased information sharing, and
3 broadened anti-money laundering requirements. In February 2010,
4 Congress re-enacted certain expiring provisions of the USA Patriot
Act.

5 74. On September 3, 2014, Defendants caused BofI to file a Form 8-K
6 with the SEC containing an Investor Presentation concerning the Company's 4Q14
7 financial and operating projections (the "4Q14 Investor Presentation"). The Q4
8 2014 Investor Presentation contained, in part, the following statements:
9

- 10 • BofI is "Consistently Ranked among the Best of the Biggest
11 Thrifts by SNL Financial";
- 12 • BofI is "a Top Performer among the Broader Universe of All
13 Public Banks and Thrifts";
- 14 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 15 • BofI's "Business Model is More Profitable Because Our Costs are
16 Lower"; and
- 17 • BofI's "Asset Growth has been Driven by Strong and Profitable
18 Organic Loan Production"

19 75. On November 4, 2014, Defendants cause BofI to file a Form 10-Q
20 with the SEC for the period ending September 30, 2014 (the 1Q15 10-Q"). The
21 1Q15 10-Q was approved by the Board and signed by Defendants Garrabrants and
22 Micheletti. The 1Q15 10-Q also contained SOX certifications signed by Defendants
23 Garrabrants and Micheletti stating that the financial information contained in the
24 1Q15 10-Q was accurate and disclosed any material changes to the Company's
25 internal control over financial reporting. The 1Q15 10-Q reported that for the
26 quarter BofI had net income of \$17.84 million, or \$1.20 per diluted share, on net
27
28

1 revenue of \$50.12 million, compared to net income of \$12.18 million, or \$0.85 per
2 diluted share, on net revenue of \$35.09 million for the same period in the prior year.

3
4 76. On November 17, 2014, Defendants caused BofI to file a Form 8-K
5 with the SEC containing an Investor Presentation concerning the Company's 1Q15
6 financial and operating projections (the "1Q15 Investor Presentation"). The 1Q15
7
8 2015 Investor Presentation contained, in part, the following statements:

- 9
- 10 • BofI is "Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial";
 - 11 • BofI is "a Top Performer among the Broader Universe of All Public Banks and Thrifts";
 - 12 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
 - 13 • BofI's "Business Model is More Profitable Because Our Costs are Lower";
 - 14 • BofI's "Asset Growth has been Driven by Strong and Profitable Organic Loan Production";
- 15

16 77. On or about November 21, 2014, Erhart sent an email to BofI's Chief
17 Risk Officer, Thomas Williams, in preparation for the upcoming Enterprise Risk
18 Management ("ERM") audit. Erhart asked whether Williams thought BofI had a
19 deposit concentration risk. Erhart was concerned and reported that a mere four
20 customers accounted for approximately 25% of total deposits, and nine customers
21 accounted for approximately 40% of total deposits. This is problematic because
22 when a large percentage of deposits are derived from a few depositors, sudden
23 withdrawals can pose a serious challenge to a Bank's ability to stay afloat and
24 maintain its regulatory compliance.
25
26
27
28

1 78. On or about December 12, 2014, the SEC served a subpoena on BofI,
2 requesting account-identifying information for an investment advisory firm
3 identified as ETIA LLC (“ETIA”).
4

5 79. On or about December 18, 2014, Defendants caused BofI to respond to
6 the SEC that it did not have any information regarding ETIA.
7

8 80. In or about early January 2015, Erhart learned of the SEC subpoena,
9 and knew that BofI did have a loan file containing information regarding ETIA.
10 Erhart further learned that a file had been created in response to the SEC subpoena,
11 containing the information regarding ETIA. Erhart learned from a BofI employee
12 that she had informed the Bank’s legal department of the existence of the file on or
13 about December 17, 2014, before BofI sent its response to the SEC denying the
14 existence of any such files.
15
16

17 81. On or about January 15, 2015, the OCC, BofI’s principal regulator,
18 requested information on Bank accounts with no Tax Identification Numbers
19 (“TINs”). BofI’s responses to the OCC was that there were no accounts without
20 TINs. This was untrue as Erhart had viewed a spreadsheet in the BSA (“Bank
21 Secrecy Act”) folder disclosing approximately 150-200 accounts where the
22 borrowers did not have a TIN.
23
24

25 82. In or about January 2015, Erhart conducted a Loan Origination Audit.
26 During the Loan Origination Audit, Erhart discovered that BofI was making
27 substantial loans to foreign nationals including Politically Exposed Persons
28

1 (“PEPs”) in potential violation of BSA/Know Your Customer rules. Erhart was able
2 to uncover readily information that many of the borrowers were criminals and other
3 suspicious persons who put the Bank at high risk for violating the BSA’s Anti-
4 Money Laundering Rules (“AML Rules”), as well as exposing BofI to reputational
5 risk. The purpose of the AML Rules is to help detect and report suspicious activity
6 including the predicate acts to money laundering and terrorist financing. The PEPs
7 included very high-level foreign officials from major oil-producing countries and
8 war zones.

11
12 83. On January 29, 2015, Defendants caused BofI to file a Form 10-Q
13 with the SEC for the period ending December 31, 2014 (the 2Q15 10-Q”). The
14 2Q15 10-Q was approved by the Board and signed by Defendants Garrabrants and
15 Micheletti. The 2Q15 10-Q also contained SOX certifications signed by Defendants
16 Garrabrants and Micheletti stating that the financial information contained in the
17 2Q15 10-Q was accurate and disclosed any material changes to the Company’s
18 internal control over financial reporting. The 2Q15 10-Q reported BofI had net
19 income of \$19.37 million, or \$1.26 per diluted share, on net revenue of \$54.81
20 million, compared to net income of \$13.15 million, or \$0.91 per diluted share, on
21 net revenue of \$38.37 million for the same period in the prior year.

22
23
24
25 84. In or about February 2015, Erhart submitted two whistleblower tips to
26 the SEC, one concerning the ETIA subpoena, and another regarding a suspicious
27 loan customer.
28

1 85. In or about February 2015, the OCC requested that BofI disclose all
2 correspondence with federal and state banking agencies and law enforcement,
3 including any and all subpoenas, criminal or otherwise. BofI responded that it had
4 not received any such documents for the review period in question. BofI, however,
5 had a BSA spreadsheet Erhart had previously seen that identified many subpoenas,
6 including from law enforcement agencies, grand juries, and even from the U.S.
7 Department of the Treasury, of which OCC is a part. Erhart knew that BofI had
8 been served with subpoenas.

9
10 86. On March 2, 2015, Defendants caused BofI to file Form 8-K with the
11 SEC containing an Investor Presentation concerning the Company's 2Q15 financial
12 and operating projections (the "2Q15 Investor Presentation"). The 2Q15 Investor
13 Presentation contained, in part, the following statements:
14
15

- 16 • BofI is "Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial";
- 17 • BofI is "a Top Performer among the Broader Universe of All Public Banks and Thrifts";
- 18 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 19 • BofI's "Business Model is More Profitable Because Our Costs are Lower";
- 20 • BofI's "Asset Growth has been Driven by Strong and Profitable Organic Loan Production";
- 21
- 22
- 23

24 87. On April 30, 2015, Defendants caused BofI to file a Form 10-Q with
25 the SEC for the period ending March 31, 2015 (the 3Q15 10-Q"). The 3Q15 10-Q
26 was approved by the Board, including Defendant Dad who had recently joined the
27
28

1 Board effective January 22, 2105, and signed by Defendants Garrabrants and
2 Micheletti. The 1Q15 10-Q also contained SOX certifications signed by Defendants
3 Garrabrants and Micheletti stating that the financial information contained in the
4 1Q15 10-Q was accurate and disclosed any material changes to the Company's
5 internal control over financial reporting. The 3Q15 10-Q reported BofI reported net
6 income of \$21.07 million, or \$1.35 per diluted share, on net revenue of \$59.03
7 million, compared to net income of \$14.61 million, or \$1.00 per diluted share, on
8 net revenue of \$40.88 million for the same period in the prior year.

11
12 88. On May 6, 2015, Defendants caused BofI to file a Form 8-K with the
13 SEC containing an Investor Presentation concerning the Company's 3Q15 financial
14 and operating projections (the "3Q15 Investor Presentation"). The 3Q15 Investor
15 Presentation contained, in part, the following statements:
16

- 17 • BofI is "Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial";
- 18 • BofI is "a Top Performer among the Broader Universe of All Public Banks and Thrifts";
- 19 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 20 • BofI's "Business Model is More Profitable Because Our Costs are Lower"; and
- 21 • BofI's "Asset Growth has been Driven by Strong and Profitable Organic Loan Production::

22
23
24 89. On July 30, 2015, Defendants caused BofI to issue a press release and
25 file a Form 8-K with the SEC announcing BofI's financial and operating results for
26 the quarter and fiscal year ending June 30, 2015 (the "2015 Form 8-K"). For the
27 quarter, the Company reported net income of \$24.40 million, or \$1.54 per diluted
28

1 share, on net revenue of \$65.57 million, compared to net income of \$16.01 million,
2 or \$1.09 per diluted share, on net revenue of \$45.22 million for the same period in
3 the prior year. For fiscal year 2015, BofI reported net income of \$82.68 million, or
4 \$5.37 per diluted share, on net revenue of \$229.54 million, compared to net income
5 of \$55.96 million, or \$3.85 per diluted share, on net revenue of \$159.55 million for
6 fiscal year 2014.
7

8
9 90. On August 10, 2015, Defendants caused BofI to file a Form 8-K with
10 the SEC containing an Investor Presentation concerning the Company's 4Q15
11 financial and operating projections (the "4Q15 Investor Presentation"). The 4Q15
12 Investor Presentation contained, in part, the following statements:
13

- 14 • BofI is "Consistently Ranked among the Best of the Biggest Thrifts by SNL Financial";
- 15 • BofI is "a Top Performer among the Broader Universe of All Public Banks and Thrifts";
- 16 • BofI is "a Top Quartile Performer Versus Bank Peer Group";
- 17 • BofI's "Business Model is More Profitable Because Our Costs are Lower"; and
- 18 • BofI's "Asset Growth has been Driven by Strong and Profitable Organic Loan Production";
- 19
- 20

21 91. On August 22, 2015, Peter Eavis of the *The New York Times* published
22 an article, titled "An Internet Mortgage Provider Reaps the Rewards of Lending
23 Boldly," about BofI's robust growth during Defendant Garrabrants' time as CEO.
24 The article stated, in relevant part:
25

26 As the leader of Bank of Internet USA, based in San Diego, Mr.
27 Garrabrants has been issuing big mortgages to high earners whom other
28 lenders might not necessarily welcome with open arms. But because its

1 financial performance has, in many ways, been spectacular, Bank of
2 Internet has been turning heads - and setting off alarm bells as well. ***The***
3 ***bank has made loans to people who were later found to have run afoul***
4 ***of the law***, and Mr. Garrabrants has had to reassure investors that the
bank has good relations with regulators.

5 Bank of Internet's loans have increased fivefold, to nearly \$5 billion,
6 over the last five years - an almost unheard-of rate of growth for these
7 tepid times in banking. Its losses from bad loans are practically
8 nonexistent, and profits are surging, in part because it charges a much
higher interest rate than the bigger banks operating in the same market.

9 "I am passionate about what we do here, and I believe in it," Mr.
10 Garrabrants said in one of several telephone interviews in recent weeks.
11 "We are proud of what we are doing here. We try to really run a good,
ethical shop, and I want people to know that."

12 [Some investors] contend that the bank is attracting people who simply
13 can't get cheaper loans - borrowers who may be more risky. ***Bank of***
14 ***Internet also makes large mortgages to wealthy foreigners, a practice***
15 ***that requires meticulous controls to comply with federal regulations***
16 ***aimed at stopping money laundering***. The bank's critics wonder whether
17 its compliance department is up to the task, though Mr. Garrabrants
18 vigorously defended its practices. They also take issue with the bank's
funding, contending that the lender is too dependent on customer deposits
that could evaporate if turbulence returns to the banking world.

19 * * *

20 Mr. Garrabrants, who has also worked at Goldman Sachs and McKinsey
21 & Company, says the critics are spreading disinformation - and losing
22 money - as they bet against his firm's soaring stock.

23 "Here's the problem for them: They are going into an earnings
24 juggernaut that has none of the things that they're talking about," Mr.
25 Garrabrants said. And he says the bank is as judicious as any other lender
26 in picking its borrowers. "It's about being thoughtful about what risks
you take and watching them and being careful," he said, adding that Bank
of Internet's deposits are a reliable source of funding.

27 * * *

1 ***Still, Bank of Internet has lent money to some unsavory characters.*** For
2 example, in 2012 it issued a \$5 million mortgage to Purna Chandra
3 Aramalla on a house in Sands Point, an affluent section of Long Island,
4 according to local property records. In 2013, federal law enforcement
5 authorities in New York charged Mr. Aramalla with Medicare and
6 Medicaid fraud. In March, he was sentenced to three years in prison.

7 In mid-2014, Bank of Internet lent \$1.05 million to Frederic Elm for a
8 house in Fort Lauderdale, Fla., property records show. In January, the
9 Securities and Exchange Commission accused Mr. Elm of running a
10 “Ponzi-like” scheme that had raised \$17 million since November 2013.
11 Mr. Elm partly settled with the agency in June.

12 And in 2012, Bank of Internet issued a \$1.26 million mortgage to Deepal
13 Wannakuwatte, a Sacramento businessman who received a 20-year
14 prison sentence last year for operating, for more than 10 years, what the
15 F.B.I. called a Ponzi scheme.

16 * * *

17 ***Then there are questions about Bank of Internet’s marketing of itself***
18 ***as a lender to “foreign nationals.” It does not disclose exactly what***
19 ***proportion of its loans are made to foreigners.*** When asked, Mr.
20 Garrabrants said it was “nowhere near the majority.” ***Banks that do this***
21 ***sort of lending can expect extra scrutiny from federal regulatory***
22 ***agencies, which have punished banks for not properly applying bank***
23 ***secrecy and anti-money-laundering laws when vetting their***
24 ***international customers.***

25 In recent months there has been unrest in the division of Bank of Internet
26 that deals with regulatory compliance. ***Earlier this year, a senior***
27 ***internal auditor, Jonathan Ball, and another employee in the division,***
28 ***Matt Erhart, left the bank. Mr. Ball did not respond to requests for***
comment. Mr. Erhart’s lawyer, Carol L. Gillam, said that she had
communicated with regulators, including the Office of the Comptroller
of the Currency, the bank’s primary regulator. She declined to provide
details.

Regulators have not publicly warned or penalized the bank for its lending
to foreign nationals, and Mr. Garrabrants often sounds exasperated when
defending that business. In his view, short-sellers had sought to stir up

1 concerns about those loans to try to persuade regulators to stop Bank of
2 Internet from acquiring parts of H&R Block's banking unit. The deal
3 was concluded this month.

4 (Emphasis added).

5 92. On August 26, 2015, Defendants caused BofI to file an annual report
6 on Form 10-K with the SEC providing the Company's financial and operating
7 results for the fiscal year ended June 30, 2015 (the "2015 10-K"). In the 2015 10-
8 K, the Company stated, in part:

10 REGULATION OF BOFI FEDERAL BANK

11
12 General. As a federally-chartered savings and loan association whose
13 deposit accounts are insured by FDIC, BofI Federal Bank is subject to
14 extensive regulation by the FDIC and, as of the Transfer Date, the
15 OCC. Under the Dodd-Frank Act, the examination, regulation and
16 supervision of savings associations, such as BofI Federal Bank, were
17 transferred from the OTS to the OCC, the federal regulator of national
18 banks under the National Bank Act. The following discussion
19 summarizes some of the principal areas of regulation applicable to the
20 Bank and its operations.

21 * * *

22 Anti-Money Laundering and Customer Identification. The U.S.
23 government enacted the Uniting and Strengthening America by
24 Providing Appropriate Tools Required to Intercept and Obstruct
25 Terrorism Act of 2001 ("USA PATRIOT Act") on October 26, 2001
26 in response to the terrorist events of September 11, 2001. The USA
27 PATRIOT Act gives the federal government broad powers to address
28 terrorist threats through enhanced domestic security measures,
expanded surveillance powers, increased information sharing, and
broadened anti-money laundering requirements. In February 2010,
Congress re-enacted certain expiring provisions of the USA
PATRIOT Act.

1 93. The 2015 10-K was signed by Defendants Garrabrants, Micheletti,
2 Allrich, Mosich, Argalas, Burke, Court, Dada, Grinberg, and Ratinoff, and it
3 contained signed certifications pursuant to SOX by Defendants Garrabrants and
4 Micheletti, stating that the financial information contained in the 2015 10-K was
5 accurate and disclosed any material changes to the Company's internal control over
6 financial reporting.
7

8
9 94. BofI filed a Proxy Statement on September 4, 2015 (the "2015
10 Proxy"). In the 2015 Proxy, the Board along with the Audit, Nominating and
11 Compensation Committees, along with the four risk committees (the Credit, the
12 Internal Assets Review, the Operations and Technology, and the ALCO
13 committees), provide enterprise-wide oversight of the BofI's management and
14 handling of risk.
15

16
17 95. These committees report regularly to the Board on risk-related matters
18 and provide the Board with insight about BofI's management of strategic, credit,
19 interest rate, financial reporting, technology, liquidity, compliance, operational, and
20 reputational risks.
21

22 96. In addition, at meetings of the Board and its committees, directors
23 receive regular updates and reports from management regarding risk management
24 practices, including credit quality, financial reporting, internal controls, compliance,
25 legal matters, asset liability, and liquidity management, among others. Furthermore,
26
27
28

1 current risk management issues are discussed regularly with the Board and its
2 committees.

3
4 97. BofI's 2015 Proxy states:

5 Our Board is actively involved in oversight and review of the
6 Company's risk management efforts either directly or through its
7 standing committees. The Company's management is responsible for
8 assessing and managing risk and communicating risks to the Board.
9 The Enterprise Risk Management ("ERM") program, led by certain
10 officers of the Company, including Mr. Garrabrants, our President and
11 Chief Executive Officer, with oversight from the Board, identifies and
12 evaluates key business risks within the financial, operational,
13 regulatory and strategic arenas and to develop risk monitoring
14 processes and response strategies to transfer, avoid, reduce or accept
15 individual risks as appropriate. The ERM program assists
16 management in determining appropriate risk tolerance levels which
17 balance risk mitigation with opportunities to create stockholder value.
18 ERM program leaders make regular reports to the Board regarding the
19 ERM program's risk identification, management and mitigation
20 strategy recommendations.

21 While the Board has retained the responsibility for general oversight
22 of risks and of our ERM program, the Board's standing committees
23 support the Board by regularly addressing various risks in their
24 respective areas of oversight. Specifically, the Audit Committee
25 primarily oversees those risks that may directly or indirectly impact
26 our financial statements, including the areas of financial reporting,
27 internal controls and compliance with public reporting requirements,
28 while the Compensation Committee assists the Board in fulfilling its
risk management oversight responsibilities associated with risks
arising from employee compensation policies and practices. Each
standing committee provides reports to the full Board at regular
meetings concerning the activities of the committee and actions taken
by the committee since the last regular meeting.

98. The statements referenced in paragraphs 46-97 were materially false
and misleading because Defendants falsely stated and/or failed to disclose material

1 adverse facts about the Company's business, operations, prospects, and
2 performance. Specifically, during the Relevant Period, Defendants made false
3 and/or misleading statements and/or failed to disclose that: (i) BofI's internal
4 controls were frequently disregarded; (ii) BofI was making risky and potentially
5 illegal loans to Politically Exposed Persons; (iii) many BofI accounts lacked
6 required tax identification numbers; (iv) BofI violated the California penal code and
7 hid such fact in its public filings; (v) BofI took unnecessary regulatory risks in
8 making loans to foreign investors and in its high deposit concentration; (vi) BofI
9 failed to provide timely and accurate responses to regulators; (vii) BofI fired a
10 whistleblower internal auditor who raised the foregoing issues to management and
11 to federal regulators; and (viii) as a result of the above, the Company's statements
12 regarding its internal controls and other financial statements were materially false
13 and misleading at all relevant times.

14 **THE TRUTH EMERGES**

15 99. After the market closed on October 13, 2015, *The New York Times*
16 published the article titled "Ex-Auditor Sues Bank of Internet" reporting that Erhart
17 filed a lawsuit against BofI for violating federal laws designed to protect
18 whistleblowers. The Whistleblower Action alleged, *inter alia*, that:

- 19 • BofI's borrowers included foreign nationals who should have
20 been off-limits under federal anti-money-laundering laws;

- Erhart had seen a spreadsheet that contained as many as 200 accounts without tax identification numbers, contrary to BofI's representations to the OCC, its primary regulator;
- BofI at times failed to provide full and timely information to regulators; and
- Erhart was fired after he revealed wrongdoing at BofI to management and federal regulators.

100. On this news, the prices of shares of BofI stock fell \$42.87, or 30.2%, to close at \$99.13 per share on October 14, 2015.

DAMAGES TO BOFI

101. BofI has been, and will continue to be, severally damages and injured by Defendants' misconduct.

102. As a direct and proximate result of Defendants' conduct, BofI has expended and will continue to expend significant sums of money.

103. Such expenditures include, but are not limited to, legal fees associated with the class action lawsuit filed against the Company and certain Defendants for violations of the federal securities laws, defense of the Whistleblower Action, and amounts paid to outside lawyers, accountants, and investigators in connection with any internal investigations.

104. Such costs include, but are not limited to, compensation and benefits paid to Defendants who breached their fiduciary duties to BofI.

105. As a direct and proximate result of Defendants' conduct, BofI has suffered and will continue to suffer a loss of reputation and goodwill, and a "liar's discount" that will plague the Company's stock in the future due to the misconduct done and misrepresentations made by Defendants and caused to be made by the Company by Defendants.

DERIVATIVE ALLEGATIONS

106. Plaintiff brings this action derivatively and for the benefit of BofI to redress injuries suffered, and to be suffered, as a result of Defendants' breaches of their fiduciary duties as directors and/or officers of BofI, gross mismanagement, abuse of control, and unjust enrichment, as well as the aiding and abetting thereof.

107. BofI is named solely as a nominal party in this action. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

108. Plaintiff is, and at all relevant times has been, a BofI shareholder. Plaintiff will adequately and fairly represent the interests of BofI in enforcing and prosecuting its rights, and, to that end, has retained competent counsel, experienced in derivative litigation, to enforce and prosecute this action.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

109. Defendants engaged in a conspiracy, common enterprise, and/or common course of conduct. Defendants caused the Company to conceal the true facts as alleged herein.

110. The purpose and effect of the conspiracy, common enterprise, and/or common course of conduct was, among other things, to: (i) facilitate and disguise Defendants' violations of law, including breaches of fiduciary duty and unjust enrichment, failure to manage regulatory compliance and internal corporate controls; (ii) to conceal adverse information concerning the Company's operations, financial condition, future business prospects, internal controls, and bonuses provided to employees; and (iii) to artificially inflate the Company's stock price.

111. Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to purposefully, recklessly, or negligently to conceal material facts, misrepresent its financial results, fail to correct such misrepresentations, and violate applicable laws. Because the actions described herein occurred under the authority of the Board, Defendants who are directors and/or officers of BofI were direct, necessary, and substantial participants in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

112. Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each of Defendants acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his overall contribution to, and furtherance of, the wrongdoing.

1 113. At all times relevant hereto, Defendants were the agent of each other
2 and of BofI, and was at all times acting within the course and scope of such agency.

3
4 **DEMAND FUTILITY ALLEGATIONS**

5 114. Plaintiff incorporates by reference and re-alleges each and every
6 allegation stated above as if fully set forth herein.

7
8 115. A pre-suit demand on the BofI's Board is futile and, therefore,
9 excused. At the time of filing of this action, the Board consisted of the following
10 nine Defendants: Garrabrants, Allrich, Burke, Mosich, Grinberg, Argalas, Court,
11 Ratnoff, and Dada, (collectively, the "Directors"). Plaintiff needs only to allege
12 demand futility as to five of the nine directors that were on the Board at the time
13 this action was commenced.
14

15
16 116. Demand is excused as to all of the Directors because each one of them
17 faces, individually and collectively, a substantial likelihood of liability as a result of
18 their scheme and the false and misleading statements and omissions of material
19 facts, which render them unable to impartially investigate the charges and decide
20 whether to pursue action against themselves and the other perpetrators of the
21 scheme.
22

23
24 117. In complete abdication of their fiduciary duties, the Directors either
25 participated in or were recklessly unaware of materially false and misleading
26 statements contained in the Company's public filings. The fraudulent scheme was
27 intended to make the Company appear more profitable and attractive to investors.
28

1 While investors were duped into believing the fraud perpetrated by Defendants, a
2 majority of the Directors sold millions upon millions of dollars' worth of Company
3 stock at artificially inflated prices based on inside material information. As a result
4 of the foregoing, the Directors breached their fiduciary duties, face a substantial
5 likelihood of liability, are not disinterested, and demand upon them is futile, and
6 thus excused.
7

9 118. The entire Board faces a substantial likelihood of liability for
10 retaliating against Erhart as a Whistleblower in violation of SOX. Section 806 of
11 the Sarbanes-Oxley Act prohibits employers such as BofI from discharging,
12 constructively discharging, demoting, threatening, harassing, or in any manner
13 discriminating or retaliating against any employee because he or she provided
14 information, caused information to be provided, or assisted in an investigation by a
15 federal regulatory or law enforcement agency, or an internal investigation by the
16 company relating to alleged mail fraud, wire fraud, bank fraud, securities fraud,
17 violations of SEC rules and regulations, or violations of federal law relating to
18 fraud against shareholders. In addition, an employer may not discharge or in any
19 manner retaliate against employee because he or she filed, caused to be filed,
20 participated in, or assisted in a proceeding relating to alleged mail fraud, wire fraud,
21 bank fraud, securities fraud, violations of SEC rules and regulations, or violations
22 of federal law relating to fraud against shareholders. If an employer takes retaliatory
23 action against an employee because he or she engaged in any of these protected
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1 activities, the employee can file a complaint with the Secretary, United States
2 Department of Labor, Occupational Safety and Health Administration (“OSHA”).

3
4 119. Erhart filed a complaint with OSHA in regards to the retaliation he
5 faced after reporting the allegedly unlawful activities at BofI to federal agencies
6 and regulators.

7
8 120. On March 12, 2015, Defendant Bar-Adon met with Erhart and told

9 121. him he was acting as General Counsel to BofI’s Audit Committee,
10 comprised of Defendants Grinberg (Chairman), Mosich, and Argalas. Thus,
11 Grinberg, Mosich, and Argalas had actual knowledge of Erhart’s whistleblower
12 complaints, and had directed Bar-Adon to meet with Erhart regarding such
13 activities.
14

15
16 122. As noted by BofI in its 2015 Proxy Statement, the Audit Committee
17 “reports to the full Board at regular meetings concerning the activities of the
18 committee and actions taken by the committee since the last regular meeting.”
19 Therefore, a reasonable inference is that BofI’s Audit Committee (Grinberg,
20 Mosich, and Argalas) reported Erhart’s complaints and whistleblowing activity to
21 the full Board at the next meeting it held subsequent to March 12, 2015. During
22 fiscal year 2015, BofI’s Board met eight times; as a result, the Board was meeting
23 on average approximately every six weeks. As a result, Defendants Allrich,
24 Garrabrants, Burke, Court, Ratnoff, and Dada received actual knowledge of
25 Erhart’s complaints and whistleblowing activity shortly after March 2015.
26
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28

1 123. Despite having actual knowledge of Erhart’s whistleblowing activity,
2 and despite knowing that Dodd-Frank, Sarbanes-Oxley, and other laws prohibit
3 retaliation against employees who report alleged wrongdoing, the Board authorized
4 and approved the firing of Erhart on June 9, 2015. All Board members thus face a
5 substantial likelihood of liability for breaching their fiduciary duties by causing the
6 Company to violate the anti-retaliation provisions of Sarbanes-Oxley and Dodd-
7 Frank.

10 124. Moreover, all Board members can reasonably be charged with actual
11 knowledge or reckless disregard of the unlawful activity alleged by Erhart during
12 the Relevant Period because the wrongdoing concerned the Company’s core (and
13 only) business – consumer and business banking products and services.

15 125. Demand on Defendant Garrabrants is futile because he is BofI’s
16 President and Chief Executive Officer, and is thus a non-independent director. By
17 its own admittance, the 2015 Proxy stated “Mr. Garrabrants is not an independent
18 director because he is our President and Chief Executive Officer.” Defendant
19 Garrabrants was ultimately responsible for all of the false and misleading
20 statements and omissions that were made, including those contained in the SEC
21 filings that he signed. His millions of dollars in stock holdings, worth \$40 million,
22 reveals his interest in keeping the Company’s stock price as high as possible.
23 Moreover, Defendant Garrabrants is a defendant in the securities fraud class action
24 lawsuit. Finally, Defendant Garrabrants conducted little, if any, oversight of the

1 Company's internal controls over public reporting of financial statements and of the
2 Company's engagement in the scheme to make false and misleading statements,
3 consciously disregarded his duties to monitor such controls over reporting and
4 engagement in the scheme, and consciously disregarded his duties to protect
5 corporate assets. Accordingly, for these reasons, too, Defendant Garrabrants
6 breached his fiduciary duties, faces a substantial likelihood of liability, is not
7 independent or disinterested, and thus demand upon him is futile and, therefore,
8 excused.

11
12 126. Demand on Defendant Ginsberg is futile as he has served as a
13 compensated Company Director throughout the Relevant Period. His insider sales
14 before the fraud was exposed, which yielded over 1.5 million dollars in proceeds,
15 demonstrates his motive in facilitating the fraud. His Company stock holding –
16 worth \$1.66 million – reveals his interest in keeping the Company stock price as
17 high as possible. Defendant Ginsberg was ultimately responsible for the false and
18 misleading statements and omissions that were made in the SEC filings that he
19 signed. Defendant Ginsberg conducted little, if any, oversight of the Company's
20 internal controls over public reporting of financial statements and of the Company's
21 engagement in the scheme to make false and misleading statements, consciously
22 disregarded his duties to monitor such controls over reporting and engagement in
23 the scheme, and consciously disregarded his duties to protect corporate assets.
24 Thus, for these reasons, too, Defendant Ginsberg breached his fiduciary duties,
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1 faces a substantial likelihood of liability, is not independent or disinterested, and
2 thus demand upon him is futile and, therefore, excused.

3
4 127. Demand on Defendant Allrich is futile as he has served as a
5 compensated Company Director and Chairman of the Board of Directors
6 throughout the Relevant Period. The large amount of Company stock that he owns
7 – worth \$4.75 million – reveals his interest in keeping the Company stock price as
8 high as possible. His insider sales before the fraud was exposed, which yielded over
9 a million dollars in proceeds, demonstrates his motive in facilitating the fraud.
10 Defendant Allrich was ultimately responsible for the false and misleading
11 statements and omissions that were made in the SEC filings that he signed. Finally,
12 Defendant Allrich, as Chairman of the ALCO Committee, conducted little, if any,
13 oversight of the Company's internal controls over public reporting of financial
14 statements and of the Company's engagement in the scheme to make false and
15 misleading statements, consciously disregarded his duties to monitor such controls
16 over reporting and engagement in the scheme, and consciously disregarded his
17 duties to protect corporate assets. Thus, for these reasons, too, Defendant Allrich
18 breached his fiduciary duties, faces a substantial likelihood of liability, is not
19 independent or disinterested, and thus demand upon him is futile and, therefore,
20 excused.

21
22 128. Demand on Defendant Burke is futile as he has served as a
23 compensated Company Director throughout the Relevant Period. The large amount
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1 of Company stock that he owns – worth \$41.46 million – reveals his interest in
2 keeping the Company stock price as high as possible. His insider sales before the
3 fraud was exposed, which yielded \$855, 571 in proceeds, demonstrates his motive
4 in facilitating the fraud. Defendant Burke was ultimately responsible for the false
5 and misleading statements and omissions that were made in the SEC filings that he
6 signed. Defendant Burke is a member of the Compensation Committee and the IAR
7 Committee. As a member of each of these Committees, Defendant Burke conducted
8 little, if any, oversight of the Company’s internal controls over public reporting of
9 financial statements and of the Company’s engagement in the scheme to make false
10 and misleading statements, consciously disregarded his duties to monitor such
11 controls over reporting and engagement in the scheme, and consciously disregarded
12 his duties to protect corporate assets. Thus, for these reasons, too, Defendant Burke
13 breached his fiduciary duties, faces a substantial likelihood of liability, is not
14 independent or disinterested, and thus demand upon him is futile and, therefore,
15 excused.

21 129. Demand on Defendant Court is futile as he has served as a
22 compensated Company Director throughout the Relevant Period. His insider sales
23 before the fraud was exposed, which yielded \$268,498 in proceeds, demonstrates
24 his motive in facilitating the fraud. Defendant Court was ultimately responsible for
25 the false and misleading statements and omissions that were made in the SEC
26 filings that he signed. As a member of the Audit Committee and of the IAR
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1 Committee, Defendant Court conducted little, if any, oversight of the Company's
2 internal controls over public reporting of financial statements and of the Company's
3 engagement in the scheme to make false and misleading statements, consciously
4 disregarded his duties to monitor such controls over reporting and engagement in
5 the scheme, and consciously disregarded his duties to protect corporate assets.
6 Thus, for these reasons, too, Defendant Court breached his fiduciary duties, faces a
7 substantial likelihood of liability, is not independent or disinterested, and thus
8 demand upon him is futile and, therefore, excused.

11
12 130. Demand on Defendant Ratinoff is futile as he has served as a
13 compensated Company Director throughout the Relevant Period. His insider sales
14 before the fraud was exposed, which yielded \$397,506 in proceeds, demonstrates
15 his motive in facilitating the fraud. Defendant Ratinoff was ultimately responsible
16 for the false and misleading statements and omissions that were made in the SEC
17 filings that he signed. As Chairman of the Credit Committee and as member of the
18 Nominating Committee, Defendant Ratinoff conducted little, if any, oversight of
19 the Company's internal controls over public reporting of financial statements and of
20 the Company's engagement in the scheme to make false and misleading statements,
21 consciously disregarded his duties to monitor such controls over reporting and
22 engagement in the scheme, and consciously disregarded his duties to protect
23 corporate assets. Thus, for these reasons, too, Defendant Ratinoff breached his
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1 fiduciary duties, faces a substantial likelihood of liability, is not independent or
2 disinterested, and thus demand upon him is futile and, therefore, excused.

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4 131. Demand on Defendant Mosich is futile as he has served as a
5 compensated Company Director and Vice Chairman of the Board of Directors
6 throughout the Relevant Period. The large amount of Company stock that he owns
7 – worth \$2.14 million – reveals his interest in keeping the Company stock price as
8 high as possible. Defendant Mosich was ultimately responsible for the false and
9 misleading statements and omissions that were made in the SEC filings that he
10 signed. Defendant Mosich, as a member of the Audit Committee and ALCO
11 Committee, conducted little, if any, oversight of the Company's internal controls
12 over public reporting of financial statements and of the Company's engagement in
13 the scheme to make false and misleading statements, consciously disregarded his
14 duties to monitor such controls over reporting and engagement in the scheme, and
15 consciously disregarded his duties to protect corporate assets. Thus, for these
16 reasons, too, Defendant Mosich breached his fiduciary duties, faces a substantial
17 likelihood of liability, is not independent or disinterested, and thus demand upon
18 him is futile and, therefore, excused.

19
20 132. Demand on Defendant Argalas is futile as he has served as a
21 compensated Company Director throughout the Relevant Period. The large amount
22 of Company stock that he owns – worth \$803,000 – reveals his interest in keeping
23 the Company stock price as high as possible. Defendant Argalas was ultimately

1 responsible for the false and misleading statements and omissions that were made
2 in the SEC filings that he signed. Defendant Argalas, as a member of the Audit
3 Committee and of the IAR Committee, conducted little, if any, oversight of the
4 Company's internal controls over public reporting of financial statements and of the
5 Company's engagement in the scheme to make false and misleading statements,
6 consciously disregarded his duties to monitor such controls over reporting and
7 engagement in the scheme, and consciously disregarded his duties to protect
8 corporate assets. Thus, for these reasons, too, Defendant Argalas breached his
9 fiduciary duties, faces a substantial likelihood of liability, is not independent or
10 disinterested, and thus demand upon him is futile and, therefore, excused.

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15 133. Demand on Defendant Dada is futile follow as he has served as a
16 compensated Company Director since January 2015. Defendant Dada was
17 ultimately responsible for the false and misleading statements and omissions that
18 were made in the SEC filings that he signed. Defendant Dada conducted little, if
19 any, oversight of the Company's internal controls over public reporting of financial
20 statements and of the Company's engagement in the scheme to make false and
21 misleading statements, consciously disregarded his duties to monitor such controls
22 over reporting and engagement in the scheme, and consciously disregarded his
23 duties to protect corporate assets. Thus, for these reasons, too, Defendant Dada
24 breached his fiduciary duties, faces a substantial likelihood of liability, is not
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1 independent or disinterested, and thus demand upon him is futile and, therefore,
2 excused.

3
4 134. Demand on the Board is futile follow as the Compensation Committee
5 determines, in conjunction with the Board, the reasonableness of the compensation
6 paid to Board members, as well as the CEO and officers. Demand in this case is
7 excused because the Directors, who are named as defendants in this action, control
8 the Company and are beholden to each other. The Board is especially beholden to
9 Defendant Garrabrants, who made and/or was responsible for causing the
10 Company's misconduct and for making the false and misleading statements of
11 material fact alleged herein and for failing to correct those false and misleading
12 statements.
13

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16 135. The Directors have longstanding business and personal relationships
17 with each other and Defendants that preclude them from acting independently and
18 in the best interests of the Company and the shareholders. These conflicts of
19 interest precluded the Directors from adequately monitoring the Company's
20 operations and internal controls and calling into question Defendants' conduct.
21 Thus, any demand on the Directors would be futile.
22

23
24 136. BofI has been and will continue to be exposed to significant losses due
25 to the wrongdoing complained of herein, yet the Directors have not filed any
26 lawsuits against themselves or others who were responsible for that wrongful
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28

1 conduct to attempt to recover for BofI any part of the damages BofI suffered and
2 will continue to suffer thereby. Thus, any demand on the Directors would be futile.

3
4 137. Defendants' conduct described herein and summarized above could
5 not have been the product of legitimate business judgments as it was based on bad
6 faith and intentional, reckless, or disloyal misconduct. Thus, none of the Directors
7 can claim exculpation from their violations of duty pursuant to the Company's
8 charter (to the extent such a provision exists). As a majority of the Directors face a
9 substantial likelihood of liability, they are self-interested in the transactions
10 challenged herein and cannot be presumed to be capable of exercising independent
11 and disinterested judgment about whether to pursue this action on behalf of the
12 shareholders of the Company. Accordingly, demand is excused as being futile.

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16 138. The acts complained of herein constitute violations of fiduciary duties
17 owed by BofI's officers and directors, and these acts are incapable of ratification.

18
19 139. The Directors may also be protected against personal liability for their
20 acts of mismanagement and breaches of fiduciary duty alleged herein by directors'
21 and officers' liability insurance if they caused the Company to purchase it for their
22 protection with corporate funds, i.e., monies belonging to the stockholders of BofI.
23 If there is a directors' and officers' liability insurance policy covering the Directors,
24 it may contain provisions that eliminate coverage for any action brought directly by
25 the Company against the Directors, known as, *inter alia*, the "insured-versus-
26 insured exclusion." As a result, if the Directors were to sue themselves or certain of
27
28

1 the officers of BofI, there would be no directors' and officers' insurance protection.
2 Accordingly, the Directors cannot be expected to bring such a suit. On the other
3 hand, if the suit is brought derivatively, as this action is brought, such insurance
4 coverage, if such an insurance policy exists, will provide a basis for the Company
5 to effectuate a recovery. Thus, demand on the Directors is futile and, therefore,
6
7 excused.
8

9 140. If there is no directors' and officers' liability insurance, then the
10 Directors will not cause BofI to sue Defendants named herein, since, if they did,
11 they would face a large uninsured individual liability. Accordingly, demand is futile
12 in that event, as well.
13

14 141. Thus, for all of the reasons set forth above, all of the Directors, and, if
15 not all of them, certainly at least five of the Directors, cannot consider a demand
16 with disinterestedness and independence. Consequently, a demand upon the Board
17 is excused as futile.
18

19
20 **FIRST COUNT**
21 **Against Defendants for Breach of Fiduciary Duties**

22 142. Plaintiff incorporates by reference and re-alleges each and every
23 allegation set forth above, as though fully set forth herein.

24 143. Defendants owed BofI fiduciary obligations. By reason of their
25 fiduciary relationships, Defendants owed to the Company the duty to exercise
26
27
28

1 candor, good faith, and loyalty in the management and administration of BofI's
2 business and affairs.

3
4 144. Defendants violated and breached their fiduciary duties of candor,
5 good faith, loyalty, reasonable inquiry, oversight, and supervision.

6
7 145. Defendants' conduct set forth herein was due to their intentional,
8 reckless, or grossly negligent breach of the fiduciary duties they owed to the
9 Company, as alleged herein. By engaging in the improper activity detailed herein,
10 Defendants intentionally, recklessly, or with gross negligence, breached or
11 disregarded their fiduciary duties to protect the rights and interests of BofI.

12
13 146. In breach of their fiduciary duties owed to BofI, Defendants willfully
14 engaged in misconduct and participated in misrepresentation of the Company's
15 business operations and prospects and failed to correct the Company's public
16 statements, rendering them personally liable to the Company for breaching their
17 fiduciary duties.

18
19
20 147. In further breach of their fiduciary duties owed to BofI, Defendants
21 willfully engaged in misconduct -- and certain of them engaged in insider selling of
22 Company stock on material non-public information -- and participated in the
23 Company's failure to maintain adequate internal controls and comply with
24 regulatory requirements, and federal and state law, rendering them personally liable
25 to the Company for breaching their fiduciary duties.
26
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1 148. Defendants had actual or constructive knowledge that they had
2 engaged in misconduct and caused the Company to improperly misrepresent its
3 business operations and prospects and they failed to correct the Company's public
4 statements. Defendants had actual knowledge of the misrepresentations and
5 omissions of material facts set forth herein, or acted with reckless disregard for the
6 truth, in that they failed to ascertain and to disclose such facts, even though such
7 facts were available to them. Such material misrepresentations and omissions were
8 made, and were subsequently not corrected, knowingly or recklessly and for the
9 purpose and effect of artificially inflating the price of Boff's securities.
10

11
12
13 149. Defendants failed in their duty of oversight and compliance with
14 regulations and federal and state laws. Defendants further failed in their duty to
15 correct errors, misstatements and omissions when it became known to them. These
16 actions were not a good-faith exercise of prudent business judgment to protect and
17 promote the Company's corporate interests.
18

19
20 150. Defendants had actual knowledge of the misrepresentations and
21 omissions of material facts set forth herein, or acted with reckless disregard for the
22 truth in that they failed to ascertain and to disclose such facts, even though such
23 facts were available to them, and failed to correct such misrepresentations and
24 omissions. Such material misrepresentations and/or omissions were caused to be
25 made knowingly or recklessly. Such failure to correct the material
26
27
28

1 misrepresentations and/or omissions was caused to be done knowingly or
2 recklessly.

3
4 151. As a direct and proximate result of Defendants' breaches of their
5 fiduciary obligations, BofI has sustained and continues to sustain significant
6 damages. As a result of the misconduct alleged herein, Defendants are liable to the
7
8 Company.

9 152. Plaintiff, on behalf of BofI, has no adequate remedy at law.

10
11 **SECOND COUNT**
Against Defendants for Abuse of Control

12 153. Plaintiff incorporates by reference and re-alleges each and every
13
14 allegation set forth above, as though fully set forth herein.

15 154. Defendants' misconduct alleged herein constituted an abuse of their
16
17 ability to control and influence BofI, for which they are legally responsible.

18 155. As a direct and proximate result of Defendants' abuse of control, BofI
19 has sustained significant damages. As a direct and proximate result of Defendants'
20 breaches of their fiduciary obligations of candor, good faith, and loyalty, BofI has
21 sustained and continues to sustain significant damages. As a result of the
22
23 misconduct alleged herein, Defendants are liable to the Company.

24 156. Plaintiff, on behalf of BofI, has no adequate remedy at law.
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THIRD CLAIM

Against Defendants for Gross Mismanagement

157. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

158. By their actions alleged herein, Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of BofI in a manner consistent with the operations of a publicly-held banking entity and with federal and state law.

159. As a direct and proximate result of Defendants' gross mismanagement and breaches of duty alleged herein, BofI has sustained and will continue to sustain significant damages.

160. As a result of the misconduct and breaches of duty alleged herein, Defendants are liable to the Company.

161. Plaintiff, on behalf of BofI, has no adequate remedy at law.

FOURTH COUNT

Against Defendants for Unjust Enrichment

162. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

163. By their wrongful acts and the omissions of material fact that they caused to be made, Defendants were unjustly enriched at the expense of, and to the detriment of, BofI.

165. Plaintiff, as a shareholder and a representative of BofI, seeks restitution from Defendants and seeks an order from this Court disgorging all profits, proceeds from insider sales, benefits, and other compensation, including any performance-based or valuation-based compensation, obtained by Defendants due to their wrongful conduct and breach of their fiduciary duties.

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1 170. Garrabrants, Micheletti, Bar-Adon, and Tolla breached their duty of
2 loyalty to BofI by not acting solely in the Company's interests in performing their
3 employment duties.
4

5 171. Those breaches of duty consisted of the conduct alleged in this
6 complaint including, without limitation, their conduct in causing the Company to
7 issue false statements regarding its operations and financial results, misstate the fact
8 that the Company maintained adequate internal controls, fire whistleblower Erhart
9 in violation of the Dodd-Frank and Sarbanes-Oxley laws, and cause the Company
10 to make other false and misleading statements during the Relevant Period.
11 Defendants benefitted from their wrongdoing because they were allowed to retain
12 their jobs in exchange for their unlawful conduct and because they received
13 compensation that was directly tied to the Company's financial performance, which
14 was greater than it would have been absent the Defendants' wrongful conduct.
15
16
17

18 172. BofI was harmed by these Defendants' breaches of the undivided duty
19 of loyalty.
20

21 173. By reason of the foregoing, the Company was harmed and will
22 continue to suffer harm as described in greater detail above.
23

24 **PRAYER FOR RELIEF**

25 FOR THESE REASONS, Plaintiff demands judgment in the Company's
26 favor against Defendants as follows:
27

28 (a) Declaring that Plaintiff may maintain this action on behalf of

1 BofI, and that Plaintiff is an adequate representative of the Company;

2 (b) Declaring that Defendants have breached and/or aided and abetted
3 the breach of their fiduciary duties to BofI;
4

5 (c) Determining and awarding to BofI the damages sustained by it
6 as a result of the violations set forth above from each of Defendants, jointly and
7 severally, together with pre-judgment and post-judgment interest thereon;
8

9 (d) Directing BofI and Defendants to take all necessary actions to
10 reform and improve its corporate governance and internal procedures to comply
11 with applicable laws and to protect BofI and its shareholders from a repeat of the
12 damaging events described herein, including, but not limited to, putting forward for
13 shareholder vote the following resolutions for amendments to the Company's
14 Bylaws or Articles of Incorporation and the following actions as may be necessary
15 to ensure proper corporate governance policies:
16
17

18 1. a proposal to strengthen the Board's supervision of operations
19 and develop and implement procedures for greater shareholder input into
20 the policies and guidelines of the Board;
21

22 2. a provision to permit the shareholders of BofI to nominate at
23 least five candidates for election to the Board; and
24

25 3. a proposal to ensure the establishment of effective oversight of
26 compliance with applicable laws, rules, and regulations.
27

28 (e) Awarding BofI restitution from Defendants, and each of them;

1 (f) Awarding Plaintiff the costs and disbursements of this action,
2 including reasonable attorneys' and experts' fees, costs, and expenses; and
3

4 (g) Granting such other and further relief as the Court may deem just
5 and proper.

6 **JURY TRIAL DEMANDED**
7

8 Plaintiff hereby demands a trial by jury.

9 Respectfully submitted,
10

11 Dated : January 22, 2016

THE ROSEN LAW FIRM, P.A.

12 /s/ Laurence M. Rosen

13 Laurence M. Rosen, Esq. (SBN 219683)

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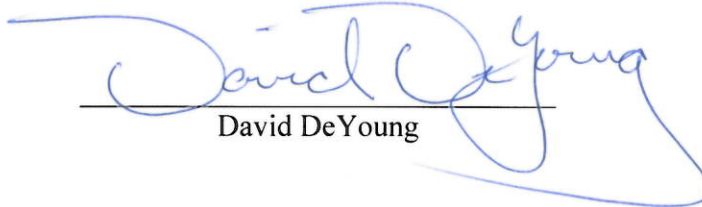
18 Email: lrosen@rosenlegal.com

19 *Counsel for Plaintiff*
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VERIFICATION

I, David DeYoung, am the plaintiff in the within action. I have read the foregoing complaint and know the contents thereof. The allegations of the complaint are true of my personal knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 21st day of January, 2016



David DeYoung